

This is an unofficial version of the special adoption and proposal. The official version can be found in the November 3, 2008 issue of the New Jersey Register at 40 N.J.R. 6482(a), as published by LexisNexis.

SPECIAL ADOPTION

HEALTH AND SENIOR SERVICES

OFFICE OF THE COMMISSIONER

OFFICE OF LEGAL AND REGULATORY AFFAIRS

Special Adopted and Concurrent Proposed New Rules: N.J.A.C. 8:32

Health Care Stabilization Fund Grants

Special New Rules Adopted and Concurrent Proposed New Rules Authorized:
September 25, 2008 by Heather Howard, Commissioner, Department of
Health and Senior Services (with the approval of the Health Care
Administration Board).

Special Adoption Filed: September 25, 2008 as R.2008 d.319.

Authority: N.J.S.A. 26:2H-18.74 et seq., particularly N.J.S.A. 2H-18.78 and
26:2H-18.78(5)c.

Calendar Reference: See Summary below for explanation of exception to the
calendar requirement.

Concurrent Proposal Number: PRN 2008-362.

Effective Date: September 25, 2008.

Expiration Date: March 27, 2009.

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The agency proposal follows:

Summary

The Health Care Stabilization Fund Act (the Act), P.L. 2008, c. 33 (N.J.S.A. 26:2H-18.74 et seq.) was enacted on June 30, 2008. These specially adopted and

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concurrently proposed new rules would implement the requirements of the Act. In response to the final report of the New Jersey Commission on Rationalizing Health Care Resources, the Act established the Health Care Stabilization Fund (the Fund) as a nonlapsing, revolving fund in the Department of Health and Senior Services (Department), to be administered by the Department in consultation with the Department of the Treasury (N.J.S.A. 26:2H-18.76). Due to a number of causes, a large number of New Jersey general hospitals are in poor financial condition and in financial distress. In light of the hospital closures in recent years and the financial challenges faced by New Jersey's hospitals, the Legislature established the Fund "for the purpose of providing emergency grants to general hospitals and other licensed health care facilities to ensure continuation of access and availability of necessary health care services to residents in a community served by a hospital facing closure or significantly reducing services due to financial distress." (N.J.S.A. 26:2H-18.75f)

The Act requires the Commissioner of the Department to adopt administrative rules, pursuant to the Administrative Procedure Act, P.L. 1968, c. 410 (N.J.S.A. 52:14B-1 et seq.), to effectuate the Act, including eligibility criteria for grant moneys, and any conditions imposed upon a grantee.

N.J.S.A. 26:2H-18.78(5)c allows the commissioner to adopt rules to effectuate N.J.S.A. 26:2H-18.74 et seq., which rules shall immediately be adopted upon filing with the Office of Administrative Law, and which shall be effective for a period not to exceed 270 days following enactment of the Health Care Stabilization Fund Act, and which rules may thereafter be amended, adopted, or readopted by the department in accordance with the requirements of Administrative Procedure Act.

To implement the mandates of the Act described above, the Department hereby specially adopts and concurrently proposes new rules at N.J.A.C. 8:32, Health Care Stabilization Fund Grants, to implement N.J.S.A. 26:2H-18.74 et seq. Described below are the specially adopted and concurrently proposed new rules.

N.J.A.C. 8:32-1.1 states the chapter purpose and scope.

N.J.A.C. 8:32-1.2 establishes definitions and concurrently proposes the following words used in new Chapter 32: "Act," "Commissioner," "Department," "health care facility," "Health Care Stabilization Fund" and "qualifying health care facility."

N.J.A.C. 8:32-1.4 provides and concurrently proposes that any New Jersey health care facility could apply for a grant if the facility is facing closure or a decrease in health care services due to financial distress, which will jeopardize the availability of necessary services for community residents.

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N.J.A.C. 8:32-1.5(a) provides and concurrently proposes that grants would be contingent upon the appropriation of money to the Fund by the Legislature in the annual State fiscal year appropriations act.

N.J.A.C. 8:32-1.5(b) provides and concurrently proposes that the Department shall administer the fund in consultation with the Department of the Treasury.

N.J.A.C. 8:32-1.5(c) articulates and concurrently proposes that the Department shall only disburse moneys from the Fund in the form of grants for qualifying health care facilities, and that the Department would consult with the State Treasurer and the New Jersey Health Care Facilities Financing Authority prior to disbursing funds for grants. N.J.A.C. 8:32-1.5(d) provides and concurrently proposes that the Department shall only consider grants in an amount of no less than \$ 1 million.

N.J.A.C. 8:32-2.1 establishes and concurrently proposes the grant application process. N.J.A.C. 8:32-2.1(a) provides and concurrently proposes that the Department shall notify health care facilities of available grant funding and the application process for the 2009 State fiscal year by publication in the New Jersey Register, and for State fiscal years after 2009 by publication in the New Jersey Register or in the Department's Directory of Grant Programs.

N.J.A.C. 8:32-2.2 requires and concurrently proposes that health care facilities applying for a grant complete the competitive application process, as directed in the Notice of Request for Grant Applications, using the DHSS Application for Grant Funds (FS-40).

N.J.A.C. 8:32-3.1 provides and concurrently proposes that the Department's selection committee shall consist of one staff member representing each of the following offices or divisions: Deputy Commissioner, Senior Services and Health Systems Branch; Chief of Staff; Legal and Regulatory Affairs; Management and Administration; and Family Health Services.

N.J.A.C. 8:32-3.1(b) provides and concurrently proposes that the selection committee shall, in consult with New Jersey Health Care Facilities Financing Authority, review all grant applications and identify qualifying health care facilities based on the factors set forth at N.J.A.C. 8:32-3.2.

N.J.A.C. 8:32-3.2 articulates and concurrently proposes the factors to be used in identifying qualifying health care facilities. A facility would be required to demonstrate in its application that, due to extraordinary circumstances, a grant is necessary to maintain access to essential health care services. In addition, the

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selection committee would be required to identify qualifying health care facilities based upon the following factors: extraordinary circumstances that threaten access to essential health services for residents in a community; persons in a community will be without ready access to essential health care services in the absence of the award of a grant; funding is unavailable from other sources to preserve or provide essential health care services; the grant is likely to stabilize access to the essential health care services; there is a reasonable likelihood that the health care facility will sustain essential health care services upon termination of the grant; the health care facility services a significant number of uninsured and underinsured persons; and the health [page=6483] care facility agrees to the conditions for receipt of a grant set forth at N.J.A.C. 8:32-3.3.

N.J.A.C. 8:32-3.3 establishes and concurrently proposes conditions for award of a grant. N.J.A.C. 8:32-3.3(a) provides and concurrently proposes that, prior to the award of a grant, each qualifying facility would agree to the following: to use the grant only for the purposes set forth in the Act and this chapter; to provide essential health care services to the community, as determined by the selection committee, based on the contents of the application; to facilitate the enrollment of individuals in appropriate government insurance programs; to provide the Department with quality of care, utilization, and financial information in accordance with N.J.A.C. 8:32-4; and, in the case of a facility whose financial condition created or contributed to the extraordinary circumstances necessitating the grant, to take corrective steps to its governance, management and business operations that the Commissioner deems appropriate. In the case of the last circumstance, the Department would be required to notify a health care facility in writing of any required conditions prior to the award of a grant.

N.J.A.C. 8:32-3.4(b) allows and concurrently proposes that the Commission or selection committee may require other conditions for the award of a grant based upon the particular circumstances of a facility.

Subchapter 4 sets forth and concurrently proposes auditing and recordkeeping requirements. N.J.A.C. 8:32-4.1(a) establishes and concurrently proposes that the Department, in consultation with the State Comptroller, require each qualifying health care facility to prepare an audit within one year of the award of a grant. Proposed N.J.A.C. 8:32-4.1(b) would require health care facilities that receive a grant to comply with the Single Audit Policy defined by the Department of the Treasury, Office of Management and Budget (OMB Circular 404) and the Single Audit Act of 1984 (Federal OMB Circular A-133), which would be incorporated by reference, as amended and supplemented. OMB Circular 404 and Federal OMB Circular A-133 articulate the standards for grant recipients regarding auditing and maintaining financial records in accordance with generally accepted accounting principles and auditing standards. Proposed N.J.A.C. 8:32-4.1(b)1i and ii would provide that these circulars are available on-line or by writing to the

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Department of Treasury or, in the case of the Federal circular, to the Federal Office of Management and Budget.

N.J.A.C. 8:32-4.1(c) articulates and concurrently proposes that a qualifying health care facility would be responsible for the costs of audit. N.J.A.C. 8:32-4.1(d) establishes and concurrently proposes that the audit evaluate whether the qualifying health care facility used the grant moneys consistent with, and for the purposes of the Act and these proposed administrative rules.

N.J.A.C. 8:32-4.2 establishes and concurrently proposes the recordkeeping requirements. N.J.A.C. 8:32-4.2(a)1 and 2 require and concurrently propose qualifying health care facilities that receive a grant to keep the following records: the amount and disposition of the proceeds of the grant; the total cost of the project for which the grant was awarded; information necessary to facilitate an effective audit; and an adequate accounting record for the project that will allow the auditor to determine project costs. N.J.A.C. 8:32-4.2(a)3 requires and concurrently proposes facilities that receive a grant to maintain effective control over and accountability for all funds, and to assure that funds are used solely for the purposes stated in the Application for Grant Funds.

N.J.A.C. 8:32-4.2(b) requires and concurrently proposes qualifying health care facilities to make available to the Department and auditors any books, papers, documents and records necessary for the purpose of audit and examination. N.J.A.C. 8:32-4.2(c) requires and concurrently proposes qualifying health care facilities to retain certain records that evidence how grant moneys are spent after submission of the final grant payment and until the project and final audit findings have been resolved.

Because the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the calendar requirement set forth at N.J.A.C. 1:30-3.3(a)5.

Social Impact

By establishing procedures and requirements for applying for grants and for distributing money from the Fund, the specially adopted and concurrently proposed rules would have a positive social impact on the general hospitals and other licensed health care facilities eligible for fund moneys, and the patients they serve.

Currently, there are 72 general hospitals in the State and approximately 1,000 other licensed health care facilities. Depending on whether they meet the eligibility criteria of the Act and proposed new N.J.A.C. 8:32, these facilities may receive grant moneys from the Fund to be used to ensure the continuation of

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access to and the availability of necessary health care services in a time of emergent need. Therefore, the Department expects a positive reaction to the specially adopted and concurrently proposed rules from hospitals, other licensed health care facilities, and the general public.

Economic Impact

The specially adopted and concurrently proposed rules would have a positive economic impact upon the general hospitals and other licensed health care facilities in New Jersey that receive grant moneys from the Fund to ensure the continuation of access and availability of necessary health care services in a time of emergent need. The specially adopted and concurrently proposed rules would not impose any application fees. However, qualifying health care facilities would have to pay the costs of the project audits required by the specially adopted and concurrently proposed rules and the recordkeeping costs. Although the Department cannot estimate the costs of audit and recordkeeping, these costs should be minimal, as most facilities already audit financial activities or contract to do so and keep and maintain records that are required by law to be kept. These costs would be offset by the award of a grant to a qualifying health care facility. The Department believes that the specially adopted and concurrently proposed rules would have a positive impact upon the public because facilities that receive grant funding would be able to continue to provide necessary health care services to community residents in a time of emergent need.

Although the Department would have to dedicate existing staff to review applications for grant funding under specially adopted and concurrently proposed new N.J.A.C. 8:32, the specially adopted and concurrently proposed rules would not have any other economic impact upon the Department, other agencies or existing funding sources.

Federal Standards Statement

The specially adopted and concurrently proposed rules would not impose standards on health care facilities in New Jersey that exceed those contained in Federal law or regulation. Since the Fund is wholly State-funded, and there are no applicable requirements that must be met in order to receive Federal funding or comply with a Federal program, a Federal standards analysis is not necessary for this proposal.

Jobs Impact

The Department does not expect that the specially adopted and concurrently proposed new rules would significantly increase or decrease the number of jobs available in New Jersey. However, those hospitals and other

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licensed health care facilities that receive grant moneys from the Fund would clearly be able to continue the provision of essential health services in times of emergent need, and may also save the jobs of the providers of these services and other health care personnel. At this time, the Department does not have any empirical data to predict how many jobs could be saved by the specially adopted and concurrently proposed rules.

Agriculture Industry Impact

The specially adopted and concurrently proposed rules would have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The specially adopted and concurrently proposed rules would impose requirements on general hospitals licensed in New Jersey, which are not considered to be "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as each employs more than 100 people full-time. However, there are other licensed health care facilities in New Jersey that may be considered small businesses within the meaning of the Regulatory Flexibility Act. However, the specially adopted and concurrently proposed rules would not impose any regulatory burdens upon health care facilities other than the requirement that they prepare and file a grant application in order to be eligible for [page=6484] grant moneys, pay costs of the audit if they receive a grant, and maintain the records needed to conduct the audit. The costs of the audit would vary depending on the size of the project. The recordkeeping costs should be minimal because most health care facilities already have the capacity to keep and maintain records that are required by law to be kept. Nonetheless, these costs would be offset by the award of a grant. The Department does not anticipate that health care facilities would need outside professionals to prepare a grant application, and because of the need for detailed information to determine how best to allocate the moneys in the Fund, the Department does not believe that any lesser application standard for smaller health care facilities would be appropriate. The audit and recordkeeping costs should be less for smaller facilities depending upon project size.

Smart Growth Impact

The specially adopted and concurrently proposed rules would have no impact upon the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

A housing affordability impact analysis is not necessary because it is extremely unlikely that the specially adopted and concurrently proposed rules would evoke a change in the average costs associated with housing, as the rules establish the application and eligibility requirements for Health Care Stabilization Fund Grants, and impose various conditions on grantees.

Smart Growth Development Impact

There is an extreme unlikelihood that the specially adopted and concurrently proposed rules would evoke a change in the housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as the rules establish the application and eligibility requirements for Health Care Stabilization Fund Grants, and impose various conditions on grantees.

Full text of the specially adopted and concurrently proposed new rules follow:

CHAPTER 32 HEALTH CARE STABILIZATION FUND GRANTS

SUBCHAPTER 1. GENERAL PROVISIONS

8:32-1.1 Purpose and scope

(a) The purpose of this chapter is to:

1. Implement N.J.S.A. 26:2H-18.74 through 18.78 (P.L. 2008, c. 33), the Health Care Stabilization Fund Act;
2. Establish the regulatory framework for the Department to provide financial assistance through temporary grants to qualifying health care facilities that are facing closure or a significant reduction in services due to financial distress; and
3. Ensure continuation of access to and availability of necessary health care services for residents in communities served by qualifying health care facilities that have to discontinue or reduce health care services due to financial distress.

(b) This chapter applies to New Jersey based health care facilities and covers requirements for grant eligibility, application, selection, audit and recordkeeping.

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8:32-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Health Care Stabilization Fund Act set forth at N.J.S.A. 26:2H-18.74 through 18.78 (P.L. 2008, c. 33).

"Commissioner" means the Commissioner of the Department of Health and Senior Services, or his or her designee.

"Department" means the New Jersey Department of Health and Senior Services.

"Health care facility" shall have the meaning established at N.J.S.A. 26:2H-2a and shall include only those facilities that have a valid license from the Department.

"Health Care Stabilization Fund" shall mean the nonlapsing, revolving fund established in the Department pursuant to the Act for temporary funding through grants to qualifying facilities.

"Qualifying health care facility" means a health care facility that the Department identifies pursuant to the process established in N.J.A.C. 8:32-3 for receipt of a grant.

8:32-1.3 Applicant eligibility

Any New Jersey based health care facility may apply for a grant pursuant to the Act and this chapter if the facility is facing closure or decrease in health care services due to financial distress, which will jeopardize the availability of any necessary services for its residents.

8:32-1.4 Grant funding

(a) The Department's award of a grant pursuant to the Act and this chapter is contingent on State appropriations for the Health Care Stabilization Fund during the annual budget process.

(b) The Department shall administer the Health Care Stabilization Fund in consultation with the Department of the Treasury.

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(c) The Department shall only disburse monies from the Health Care Stabilization Fund in the form of grants for qualifying health care facilities.

1. Prior to disbursement of funds for grants, the Department shall consult with the State Treasurer and the New Jersey Health Care Facilities Financing Authority.

(d) The Department shall only award a grant in an amount that is no less than \$ 1 million.

SUBCHAPTER 2. GRANT APPLICATION PROCESS

8:32-2.1 Notice of available funding

(a) The Department shall notify health care facilities of available grant funding and the specific application process and timeline each year through the following methods:

1. For the 2009 State fiscal year, publication of the Notice of Availability of Grant Funds in the New Jersey Register; and

2. For State fiscal years after July 1, 2009, either publication of the Notice of Availability of Grant Funds:

i. In the New Jersey Register; or

ii. In the Department's "Directory of Grant Programs," available electronically at <http://nj.gov/health/grants/directory.shtml>.

8:32-2.2 Application process

Each health care facility applying for a grant shall complete the competitive application process, as directed in the Notice of Availability of Grant Funds, using the "DHSS Application for Grant Funds (FS-40)," which is available electronically at <http://nj.gov/health/grants/forms.shtml> under "Grant Application Package-General."

SUBCHAPTER 3. PROJECT SELECTION

8:32-3.1 Selection committee

(a) The Department's selection committee shall consist of one staff member representing each of the following offices or divisions:

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1. Deputy Commissioner, Senior Services and Health Systems Branch;
2. Chief of Staff;
3. Legal and Regulatory Affairs;
4. Management and Administration; and
5. Family Health Services.

(b) The Department's selection committee shall, in consultation with the Health Care Financing and Funding Authority:

1. Review all applications submitted pursuant to N.J.A.C. 8:32-2; and
2. Identify qualifying health care facilities based on the factors set forth at N.J.A.C. 8:32-3.2.

8:32-3.2 Factors for identifying qualifying health care facilities

(a) In order to be a qualifying health care facility, the facility shall demonstrate in its application that due to extraordinary circumstances, a grant is necessary to maintain access to essential health care services or referral sources.

(b) The selection committee shall identify qualifying health care facilities based on the following factors:

1. Extraordinary circumstances threaten access to essential health services for residents in a community;
2. Persons in a community will be without ready access to essential health care services in the absence of the award of the grant;
3. Funding is unavailable from other sources to preserve or provide essential health care services;
4. The grant is likely to stabilize access to the essential health care services;
5. There is a reasonable likelihood that the health care facility will sustain essential health care services upon the termination of the grant;
6. The health care facility agrees to the conditions for receipt of a grant set forth at N.J.A.C. 8:32-3.3; and

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7. The health care facility serves a significant number of uninsured and underinsured persons.

8:32-3.3 Conditions for award of a grant

(a) Prior to the award of a grant, each qualifying health care facility shall agree to:

1. Use the grant only for the purposes set forth in the Act and this chapter;
2. Provide essential health care services to the community, as determined by the selection committee, based on the contents of the "DHSS Application for Grant Funds";
3. Facilitate the enrollment of individuals in appropriate government insurance programs;
4. Provide the Department with quality of care, utilization, and financial information as requested by the Department in accordance with N.J.A.C. 8:32-4; and
5. Such corrective steps to its governance, management, and business operations as the commissioner deems reasonable and appropriate in light of the facility's circumstances and the health care needs of the community, in the case of a facility whose financial condition created or contributed to the extraordinary circumstances necessitating the award of the grant.
 - i. The Department shall notify a health care facility of conditions, in the circumstance set forth in (a)5 above, writing prior to the award of a grant.

(b) The Commissioner or selection committee may impose additional conditions for an award of a grant based on circumstances particular to each qualifying health care facility.

SUBCHAPTER 4. AUDIT AND RECORDKEEPING

8:32-4.1 Audit

(a) The Department, in consultation with the State Comptroller, shall require each qualifying health care facility to complete an audit within one year of awarding the grant to the facility.

(b) Qualifying health care facilities in receipt of a grant shall:

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1. Comply with the State of New Jersey Single Audit Policy defined by the Department of the Treasury, Office of Management and Budget (New Jersey OMB Circular 0404) and the Single Audit Act of 1984 (Federal OMB Circular A-133), incorporated herein by reference, as amended and supplemented.

i. Copies of the State circular are available electronically from the New Jersey Department of the Treasury at <http://www.state.nj.us/infobank/circular/circindx.htm> or by written request to:

Department of the Treasury
Office of Management and Budget
33 W. State Street
PO Box 221
Trenton, NJ 08625-0221.

ii. Copies of the Federal circular are available electronically from Office of Management and Budget at www.whitehouse.gov/OMB or by written request to:

Office of Management and Budget
New Executive Office Bldg.
725 17th St. N.W.
Washington, DC 20503.

(c) Audit costs incurred by a qualifying health care facility to comply with this subchapter are the sole responsibility of the facility.

(d) The audit shall evaluate whether the qualifying health care facility used the grant:

1. Consistent with the provisions of the Act, this chapter, and any conditions imposed upon the award of the grant; and

2. To further the purposes of the Act and this chapter.

8:32-4.2 Recordkeeping

(a) All qualifying health care facilities in receipt of a grant shall:

1. Keep records which fully disclose:

i. The amount and the disposition of the proceeds of the grant;

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ii. The total cost of the project in connection with which the Department awarded the grant; and

iii. Information necessary to facilitate an effective audit;

2. Establish and maintain an adequate accounting record for the project, which will allow the auditor to determine the allowability of costs incurred for the project; and

3. Maintain effective control over and accountability for all funds and adequately safeguard all funds to assure that they are used solely for purposes stated in the "DHSS Application for Grant Funds."

(b) Qualifying health care facilities shall make available to the Department and auditors any books, documents, papers, and records that are pertinent to a grant received under the Act and this chapter, for the purpose of audit and examination.

(c) Qualifying health care facilities shall:

1. Keep records as the Commissioner may prescribe, including records which fully disclose the final grant payment, documentary evidence such as invoices, cost estimates, appraisal reports and negotiation documents relating to each item of project cost including, but are not limited to, vendor's invoices, applicable purchase orders, receiving reports, inventory records, methods of pricing, returns, production cost reports, physical inventories, and production cost accounts;

2. For a period of three years, unless otherwise directed in the award, after the date of the submission of the final grant payment, retain evidence of all payments for items of project costs including vouchers, canceled checks or warrants, and receipts for cash payments; and

3. Retain the records referenced in (c)1 and 2 above until the qualifying health center's project and final audit findings have been resolved.